
WONG SENG**v.****LEE YO LEN**

HIGH COURT MALAYA, JOHOR BAHRU

ABU MANSOR ALI J

[DIVORCE PETITION NO. 171 OF 1985]

10 DECEMBER 1988

FAMILY LAW: *Allegation by petitioner that marriage had broken down irretrievably - Whether on the facts the marriage had broken down irretrievably.*

The petitioner petitioned for divorce on the ground that the marriage had broken down irretrievably. The petitioner's evidence was that around 1970 the respondent became a habitual gambler which resulted in frequent quarrels between the petitioner and the respondent. On one occasion the respondent came to the petitioner's factory with a chopper to pick a quarrel over the payment of a gambling debt and also alleged that the petitioner was having an affair with a clerk at the factory.

As a result of the frequent quarrels and the respondent's behaviour the petitioner left the matrimonial home in 1983. The respondent however continued to harass the petitioner at the factory and in front of his customers.

Held:

[1] The petitioner had on the evidence before the Court satisfied the Court that the marriage had broken down irretrievably.

[2] *Decree Nisi* granted to be made absolute in 3 months from date of judgment. Petitioner granted custody of the parties youngest child with reasonable access to the respondent. The petitioner ordered to pay RM300 per month to the respondent from 1 January 1989. No order as to costs.

For the petitioner - T. Balaskanda; M/s. Zaman & Associates

For the respondent - Michael Teoh; M/s. Lim, Han & Teoh

JUDGMENT**Abu Mansor Ali J:**

This is a petition for the dissolution of a marriage and ancillary relief. The proceedings was filed under the Law Reform (Marriage and Divorce) Act 1976. The ground set out in the petition for divorce, the allegation being that the marriage has broken down.

The parties were married in March 1963. They were married under Chinese rites and the marriage was duly registered on 30 April 1983. At the time parties were married, the petitioner was already in a carpentry business and the respondent was in fact a cook for petitioner. When they first married, they went to stay in Jalan Haji Manan, where the petitioner had his carpentry shop. It was only in 1969 the petitioner built his house in No. 9, Jalan Chengai.

They only moved after the house was built. They have four children to the marriage, all of them having attained maturity except the last child Wong Sin Siong was still a junior of 14 years old.

According to the petitioner's evidence that around 1970 the matrimonial bliss was disrupted because the respondent became a habitual gambler. She left the house in the morning and sometimes did not come back. During this period, the petitioner would have to take the children out for food.

Between 1970 to 1983 petitioner says he used to have frequent quarrels with the respondent. In fact the petitioner alleged that on occasion the respondent even came to the factory with a chopper to pick up a quarrel with petitioner over money for gambling debt. The respondent

a went so far as to smash the table and the window of the factory. There was also an allegation by the respondent that petitioner was having an affair with Lee Beng Hui, a woman clerk at the factory. The clerk resigned from her job as a result of this allegation. Petitioner never intended to marry Lee Beng Hui. She was already a married woman.

b As a result of the frequent quarrels and the respondent's behaviour, petitioner left the matrimonial home in 1983 and stayed at No. 14, Jalan Jati, Kluang. Respondent's harassment of the petitioner continued at the factory and sometimes even in front of customers. On 24 April 1984 the petitioner did lodge a report to the police complaining of respondent's behaviour (see Bundle of Pleadings p. 10). In petitioner's report, respondent is alleged to have tried to pour petrol on petitioner when he went to collect his belongings from the matrimonial home. He escaped by running away when respondent tried to burn him.

c In his evidence, the applicant also related how on 23 July 1986 he came across the respondent in the company of another man, Lim Ah Boey in a car JAG 1429 at a palm oil estate around midnight. He was so angry that he took a piece of wood to hit the car. Before he could do so the said car sped off.

d He also took the action of stopping the respondent's allowance for settling bills for the house such as marketing. Before the estate incident, petitioner said he used to pay RM150 per week to respondent or RM600 per month. After this accident of seeing his wife with another person, he refused to pay.

e As for respondent's maintenance, petitioner is prepared to pay RM300 per month. This is in addition to the expenses for his 3 children. He is also willing to pay for the maintenance of No. 9, Jalan Chengai. He is not prepared however, to give it to respondent in case she should transfer it. He has no objection to having the house transferred to his three sons and the respondent stay in that house.

I have to decide whether the petitioner had made out a case for the granting of the order sought before me.

f After having taken an overview of all the evidence given at this hearing, I am satisfied fully that after what had transpired between the respondent and the petitioner, it is crystal clear that the petitioner cannot be expected to live with the respondent. From the point of view of the petitioner, the respondent had behaved in a manner not expected of her. Her gambling habit got the better of her to the extent of staying away from home and having the children to their own device for food. Respondent's gambling led to frequent quarrels with petitioner hurling charges that petitioner was having an affair. As regards respondent's gambling habit, I am satisfied that it is from the respondent's own that she plays 'mahjong' to pass the time but lately she had not been gambling a lot. On the evidence before me, I am satisfied that the quarrels were as a result of respondent's gambling habit. I find on the independent evidence of petitioner's own workers that respondent's gambling had been the cause of constant conflict between the parties.

g On the evidence that had been presented to me, I am satisfied that this marriage had broken down irretrievably and the decree of dissolution must therefore be made. The marriage is hereby ordered dissolved and the *decree nisi* to be made absolute in 3 months from today's date.

h Turning to the prayers for ancillary relief, I order that the petitioner do have custody of his son Wong Sin Siong, his youngest son aged 14 years with reasonable access to the respondent. The petitioner is also ordered to pay RM300 per month to the respondent as agreed to by the petitioner with effect from 1 January 1989. I order that there be no cost to this petition, and I order accordingly.

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Also found at [1990] 1 CLJ 336